



PUBLIC NOTICE

Federal Communications Commission
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MEDIA BUREAU SEEKS COMMENT ON IMPLEMENTATION OF THE TELEVISION VIEWER PROTECTION ACT OF 2019

MB Docket No. 21-501

Comments Due: February 3, 2022
Reply Comments Due: March 7, 2022

Through this Public Notice, we invite comment from interested parties on the status of implementation of the Television Viewer Protection Act of 2019 (TVPA). The TVPA is the latest in a series of Congressional actions that have revised the Communications Act of 1934, as amended (the Act), to encourage competition and establish parameters for the carriage of television broadcast stations by multichannel video programming distributors (MVPDs).¹

Section 642 of the Act, as added by the TVPA,² requires MVPDs to “give consumers a breakdown of all charges related to the MVPD’s video service” before entering into a contract with a consumer for service,³ and also gives consumers 24 hours in which to cancel such service without penalty.⁴ In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband Internet access service from charging consumers for equipment they do not provide.⁵ Congress enacted this provision to “protect consumers throughout the media market and when purchasing MVPD or broadband service.”⁶ Pursuant to section 1004(b) of the TVPA,⁷ the Media

¹ The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the “Further Consolidated Appropriations Act, 2020” (H.R. 1865, 116th Cong.). The TVPA was enacted together with the Satellite Television Community Protection and Promotion Act of 2019 (STCPPA), Pub. L. No. 116-94, 133 Stat. 2534, 3201 (2019), which was enacted as Title XI of the “Further Consolidated Appropriations Act, 2020” (H.R. 1865, 116th Cong.). The STCPPA amended the Copyright Act of 1976 to narrow the scope of the satellite distant signal statutory copyright license in 17 U.S.C. § 119, including by requiring satellite carriers to provide local-into-local service to all 210 DMAs as a pre-condition to use that license, but made the satellite distant signal statutory copyright license permanent.

² 47 U.S.C. § 562(a) (as added by section 1004(a) of the TVPA).

³ H.R. Rep. No. 116-329, 116th Cong., 1st Sess. 2019 at 4 (House Report). Section 642(a) of the Act indicates that information about fees and other charges can be provided by phone, in person, online, or by other reasonable means, and that a copy of this information must be sent to consumers by email, online link, or other reasonably comparable means not later than 24 hours after entering into a contract. 47 U.S.C. § 562(a).

⁴ See House Report at 4.

⁵ *Id.*

⁶ See *id.* at 7.

⁷ See TVPA, § 1004(b) (“Section 642 of the [Act] . . . shall apply beginning on the date that is 6 months after the date of the enactment of this Act. The [Commission] may grant an additional 6-month extension if [it] finds that good cause exists for such . . . extension.”).

Bureau in April 2020 granted a blanket six-month extension until December 20, 2020 of the effective date of section 642.⁸

Section 325(b)(3)(C)(vi) of the Act, as added by the TVPA, allows smaller MVPDs to negotiate collectively as a buying group for retransmission consent with large broadcast station groups, and requires large broadcast station groups to negotiate in good faith for retransmission consent with a qualified MVPD buying group.⁹ As required by the TVPA, the Commission in May 2020 adopted rules providing for negotiation of retransmission consent between “qualified [MVPD] buying group[s]” and “large [broadcast] station group[s]” as those terms are defined in the TVPA.¹⁰ In particular, the Commission adopted rules that, among other things: (i) define the term “large station group” as used in the TVPA to mean, in relevant part, an entity whose individual television broadcast station members *collectively* have a national audience reach of more than 20 percent;¹¹ and (ii) define the term “qualified MVPD buying group” as used in the TVPA to mean, in relevant part, an entity that negotiates on behalf of MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in a given local market.¹² Those rules became effective on July 20, 2020.¹³

Given that the statutory provisions and rules discussed above have been effective for at least one year, we seek comment on the implementation of these provisions. In particular, we seek comment from entities subject to section 642 on the steps they have taken to implement the requirements set forth in that provision.¹⁴ In addition, we seek comment from consumers on whether, and to what extent, those steps have been effective in satisfying the statutory requirements and furthering Congress’s goal of “protect[ing] consumers throughout the media market and when purchasing MVPD or broadband service.”¹⁵ With regard to section 642(c), which addresses charges for covered equipment,¹⁶ we seek public input on the extent to which (if at all) subject entities continue to assess charges for equipment that are expressly prohibited by the statute. For example, are any providers of covered services or fixed

⁸ *Implementation of Section 1004 of the Television Viewer Protection Act of 2019*, MB Docket No. 20-61, Order, 35 FCC Rcd 3008 (MB 2020).

⁹ 47 U.S.C. § 325(b)(3)(C)(vi) (as added by section 1003(a)(3) of the TVPA).

¹⁰ *Implementation of Section 1003 of the Television Viewer Protection Act of 2019*, MB Docket No. 20-31, Report and Order, 35 FCC Rcd 4961 (2020) (*Report and Order*).

¹¹ *Id.* at 4963, para. 6.

¹² *Id.* at 4964, para. 7. In the rulemaking proceeding implementing the TVPA amendments to section 325, smaller MVPDs supported the Commission’s interpretation of these statutory terms. *See* ACA Connects Comments in MB Docket No. 20-31, at 3 (“ACA Connects . . . agrees with the Commission’s proposal to clarify the definitions of ‘large station group’ and ‘qualified MVPD buying group.’”). With the exception of defining these terms as described, the implementing rules adopted by the Commission reflect the language in the TVPA. *See Report and Order*, 35 FCC Rcd at 4964, para. 8.

¹³ *Order Implementing New Retransmission Consent Provisions in Television Viewer Protection Act Becomes Effective on July 20, 2020*, MB Docket No. 20-31, Public Notice, 35 FCC Rcd 6385 (MB 2020).

¹⁴ *See* 47 U.S.C. § 562(a) (establishing requirements to ensure certain consumer rights in sales of covered services); *id.* § 562(b) (establishing requirements to ensure certain consumer rights in e-billing of covered services); *id.* § 562(c) (establishing requirements to ensure certain consumer rights to accurate equipment charges by providers of a “covered service” or “fixed broadband internet access service”). The statute defines the term “covered service” as “service provided by [an MVPD], to the extent such distributor is acting as [an MVPD].” *Id.* § 562(d)(3).

¹⁵ House Report at 7.

¹⁶ Section 642(d)(2) of the Act defines “covered equipment” as “equipment (such as a router) employed on the premises of a person (other than a provider of a covered service or fixed broadband internet access service) to provide a covered service or to provide fixed broadband internet access service.” 47 U.S.C. § 562(d)(2).

broadband Internet access services¹⁷ continuing to impose fees on consumers for the use of covered equipment that has been provided by the consumer?¹⁸ Are such providers assessing charges for the rental, lease, or provision of covered equipment that they have not provided to the consumer?¹⁹ Are any such providers imposing fees for the rental, lease, or provision of covered equipment that the consumer has returned to the provider, and which fees otherwise are not permissible under the statute?²⁰

With regard to section 325(b)(3)(C)(vi) of the Act, we seek comment on whether the Commission's rules implementing that provision have been effective in advancing the "key purpose of the new good faith negotiation provisions . . . to level the playing field by 'allow[ing] smaller MVPDs to collectively negotiate as a buying group [with large station groups] for retransmission consent.'"²¹ To what extent (if at all) are smaller MVPDs utilizing these new provisions in retransmission consent negotiations with large station groups? We note that the Commission thus far has received no complaints concerning implementation of the amendments to section 325.

Finally, we also seek comment on any other issues that stakeholders believe are relevant to an assessment of the implementation and/or efficacy of the provisions of the TVPA and its implementing rules.

Ex Parte Rules. The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket No.

¹⁷ Section 642(d)(1) provides that "the term 'broadband internet access service' has the meaning given such term in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation." *Id.* § 562(d)(1).

¹⁸ *See id.* § 562(c)(1).

¹⁹ *Id.* § 562(c)(2)(A).

²⁰ *Id.* § 562(c)(2)(B) (prohibiting providers of covered services or fixed broadband Internet access services from charging consumers for "renting, leasing, or otherwise providing to the consumer covered equipment . . . *except to the extent that the charge relates to the period beginning on the date when the provider provided the equipment to the consumer and ending on the date when the consumer returned the equipment to the provider*"") (emphasis added).

²¹ *Implementation of Section 1003 of the Television Viewer Protection Act of 2019*, MB Docket No. 20-31, Notice of Proposed Rulemaking, 35 FCC Rcd 644, 647, para. 7 (2020), *citing* House Report at 4.

²² 47 CFR § 1.1200 *et seq.*

21-501. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Raelynn Remy, Raelynn.Remy@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

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